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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 20, 2003

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services and Wireline/Internet Access Services, CC Docket Nos. 01-337 and 02-33, 95-20, 98-10.

Dear Ms. Dortch:

On March 19, 2003, the undersigned and Dr. Lee Selwyn of Economics and Technology, Inc., on behalf of The Ad Hoc Telecommunications Users Committee ("Ad Hoc"), met with Jeffrey Carlisle, Senior Deputy Chief Wireline Competition Bureau; Carol Mattey, Deputy Chief Wireline Competition Bureau; Brent Olson, Deputy Division Chief Competition Policy Division; Cathy Carpino and Terri Natoli. to discuss the proceedings referenced above. The participants discussed the issues raised by Ad Hoc in its written pleadings filed in the referenced dockets. In addition. we discussed the materials attached hereto.

The first attachment summarizes the substance of Ad Hoc's previously-filed pleadings. The meeting participants discussed Tables 3 and 7 in the second attachment which is a declaration filed January 23, 2003, in the public record of the Commission's proceeding in RM No. 10593. The participants discussed the special access profit margin indicated in the third attachment which is a "Revenue Profile" produced by Verizon. Finally, the participants discussed the difference in relative size of the MSAs with Phase I and Phase II pricing flexibility under the Commission's rules. The MSAs are listed in the fourth attachment.

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), copies of this letter and attachments have been filed with the Office of the Secretary.

Sincerely,

Colleen Boothby

Colleen Boothby

Counsel for
Ad Hoc Telecommunications Users Committee

Attachments

cc: Jeffrey Carlisle
Carol Mattey
Brent Olson
Cathy Carpino
Terri Natoli

200.02\Broadband Rulemaking\Ex Parte 3 1903.doc

- Competition in broadband business markets has yet to develop
  - Member survey confirms little or no competition
  - Cable is not an option for business services
  - The BOCs can and do raise their prices when they get regulatory flexibility
  - BOCs are not competing out of region
- There is no evidence of competition in the record for either docket
  - No party to these proceedings has proffered evidence of competition in this market
  - No party has rebutted Ad Hoc's showing that competition does not exist
- End users need the protection of the Computer II/III rules
  - End users want to control their choice of CPE and ISPs
  - Business end users need the technological innovation and downward pricing pressure of open markets for CPE and information services
- The Commission must also
  - Enforce the non-discrimination. pricing, and tariffing requirements in the Act
  - Revive incentive regulation of ILEC prices for broadband business services
    - Initialize ILEC special access rates at the price cap-regulated levels in place before MSA pricing
    - Initiate and complete an X factor specification before the CALLS plan re-targets the X to GDP-PI in July 2004
  - Continue the ILECs' contract tariff authority so that ILECs and customers can negotiate to respond to competition if it emerges

ATTACHMENT 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of ATBT Corp Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	**RM No. 10593**

Reply Declaration

of

LEE L. SELWYN

on behalf of

ATBT Corp.

January 23, 2003

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DECLARATION OF LEE L. SELWYN

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	**RM No. 10593**

REPLY DECLARATION OF LEE L. SELWYN

Introduction

Lee L. Selwyn, of lawful age, declares and says as follows:

1. My name is Lee L. Selwyn: I am President of Economics and Technology, Inc. ("ETI"), Two Center Plaza, Suite 400, Boston, Massachusetts 02108. ETI is a research and consulting firm specializing in telecommunications and public utility regulation and public policy. I have participated in proceedings before the Federal Communications Commission ("FCC" or "Commission") dating back to 1967 and have appeared as an expert witness in hundreds of state proceedings before more than forty state public utility commissions. My Statement of Qualifications is annexed hereto as Attachment 1 and is made a part hereof.

2. I have been asked by AT&T to review and analyze the various factual claims advanced by the RBOCs in support of their contention that reinstatement of price regulation for special

access scrvices is not requircd. Specifically, the RBOCs havc challenged evidence presented by AT&T in support of its *Petition* that spccial access prices in **MSAs** subject to Phase II pricing flexibility have increased relative to special access prices that remain subject to price cap regulation, that rates of return on special access services have risen to patently excessive levels, and that cnmpctition for special access services in areas subject to Phase II pricing flexibility is not sufficient **to** constrain RBOC exercise of market power with rcspect to these services. As I show in this declaration, these **RBOC** contentions arc without merit and in no sense refute or otherwise undcrminc rhc factual basis for AT&T's *Petition*.

Summary

3. **As** revealed in the documentation supporting AT&T's initial petition, ample evidence exists that priccs for special access scrviccs have increased in arcas in which the RBOCs have been graiitcd full Phase II pricing flexibility. In their comments regarding AT&T's cvidencc, the RBOCs launched a multi-faceted attack that surprisingly left untouched the most compelling piece of AT&T's evidence. its comparison of the prices for special access services tariffed in areas in which priciiig flexibility has been grantcd to thc prices that remain **in** effect in price caps regulated areas. In the inaterial below. I provide further evidence of special access price increases through examination ofthc RBOCs' tariffs, and demonstrate **that** Verizon's dcfcnse of its price increases does not explain the increascs that have actually occurred. I also provide evidence to refute the RBOCs' claim that CLECs have deployed or are in a financial position to deploy their own facilities to serve a substantial portion ofthe buildings occupied by special access customers. I establish. **to** the contrary. that competitively provided special access facililies are only available at an extremely small number of commercial buildings, compelling IXCs to acquire the vast majority of these services from the ILEC. Even in the most competitive **MSA** in the US, New York, where AT&T provider sei-vice at 3,613 different buildings, no AT&T or other CLEC facilities are available at 89.9% of building locations. Finally, I demonstrate that

the RBOCs' have produced very weak evidence in their attempts to discredit AT&T's analysis of special access rates of return based on data reported to the Commission under ARMIS and show that, in fact, ARMIS data provides a *conservative* estimate of RBOC rates of return on Special Access Services.

I. PRICING OF SPECIAL ACCESS SERVICES IN MSAs SUBJECT TO PHASE II PRICING FLEXIBILITY

RBOC comments deflect attention away from compelling price comparison data included in AT&T's Petition.

4. The basic premise upon which the FCC relied in establishing guidelines for Phase II pricing flexibility in CC Docket 96-262 was that if the required level of collocation of CLECs in ILEC central offices had been established, there would at that time be a sufficient level of competition in those markets to constrain ILEC market power and thereby obviate the need for continued price regulation of spccial access services.[1] On that basis, one would *expect* that where the conditions for Phase II pricing flexibility had bccn satisfied and that pricing flcxibility had been implemented, spccial access prices in those arcas would have actually decreased by a greater relative amount than in those (putatively less compctitivc) areas still subject to price cap regulation. Indecd, in their Reply Declaration, AT&T Dcclarants Ordover and Willig note specifically that the purported "need" to drop prices in response to competition was specifically advanced by the RROCs as a basis for the pricing flexibility that they had sought.[2] That aside, with its *Petition* AT&T has provided detailed evidence demonstrating that not only have special access prices not decreased by a greater relative amount in MSAs subject to Phase II pricing flexibility than in areas that remain subject to price regulation, but that in fact under "pricing flexibility" the RROCs have actually *increased* special access rates where permitted to do so.

5. While the RBOCs and their experts have gone to great lengths in their attempts to discredit the competition and rate of return (ROR) analyses proffered in support of AT&T's *Petition*, they have said little in regard to the *prima facie* evidence of increasing prices — the

1. *Pricing Flexibility Order*, 14 FCC Rcd. 14221 (1999).

2. Ordover/Willig Reply Decl., at para. 33.

comparison of price levels for price cap regulated services versus those for services where Phase II pricing flexibility has been grantcd.[3]

6. Verizon's is the only Comment that attempts to address AT&T's evidence that **BOC** special access prices have *increased* in those MSAs in which Phase II pricing flexibility has been allowed. Other RBOC comments either ignore AT&T's pricing data entirely, or mention it only in passing.[4] In Footnote 58 of its tiling, Verizon claims that the changes in its special access prices represent a mixture of incrcoses and decreases. While it is within the realm of possibility that prices for some elements of Verizon special access service in Verizon's Phase II areas did decline, our review *of* the tariffs tailed to reveal any such instance. Apparently, **the** "mixture" *of* increases and decreases **to** which Vcrizon was referring in its footnote 58 consists of *increases* in those areas in which pricing flexibility has been granted and *decreases* in the remaining areas where special access rater remain subject to price cap regulation.

7. Specifically, Verizon claims that its price changes are part ***of*** an attempt to "expand the differential between zones 1, 2 and 3."[5] Analysis of Verizon's pricing data, however, proves this defense of its price changes to be untrue. **As** the table below demonstrates, Veriron has applied straight, across-the-board increases to the pricing flexibility price ranges **for** all three zones, such that the relative "differential between zones 1, 2 and 3" has actually remained *unchanged* although the rate *levels* have risen. The sample data in the table below are based upon the pricing for DS-3 single channels at an "initial" premises at month-to-month rates.

3. See Declaration of Joseph M. Stith. AT&T Petition

4. See, e.g., the mention of the pricing evidence in Bell South's comments only in reference to a criticism of AT&T's **ARMIS** based analysis. BellSouth Comments at footnote 7.

5. Vcriron Comments. at tn. 58.

Although limited to a single category of channel terminal prices, the results are consistent with the changes made to Verizon's other special access rate elements as hell.

Table 1

Contrary to Its Claims, the Changes that Verizon has made to its Special Access Tariffs Do Nothing to "Increase the Differential" between Zone prices

Company Name	State	Zone/Band	Standard Pricing 'Initial Premises" DS3 Chan Term*	phase II Pricing Flexibility 'Initial Premises" DS3 Chan Term*	% by which Phase II prices have been increased over Price Cap Level
Verizon	DC, DE, MD, NJ,	Zone 1/Band 4	$2,667.50	$3,025.00	13%
FCC Tariff No. 1	PA, VA, WV	Zone 2/Band 5	$2,800.88	$3,17625	13%
		Zone 3/Band 6	$2,934.25	$3,327 50	13%
Differential between Zone 1/ Bad 4 and Zone 3/Band 6			10%	10%	
Verizon	MA	Zone 1/Band 4	$2,310.00	$2541.00	10%
FCC Tariff No. 11		Zone 2/Band 5	$2,425.50	$2,668.05	10%
		Zone 3/Band 6	$2,541.00	$2,795.10	10%
Differential between Zone 1/ Bard 4 and Zone 3/Band 6			10%	10%	
Verizon	NY, CT	Zone 1/Band 4	$2.31000	$2,541.00	10%
FCC Tariff NO. 11		Zone 2/Band 5	$2,425.50	$2,668.05	10%
		Zone 3/Band 6	$2,541.00	$2,795.10	10%
Differential between Zone 1/ Bad 4 and Zone 3/Band 6			10%	10%	
Verizon	ME, NH, RI, VT	Zone 1/Band 4	$2,541.00	$2,795.10	10%
FCC Tanff NO. 11		Zone 2/Band 5	$2,541.00	$2,795.10	10%
		Zone 3/Band 6	$2,541.00	$2,795.10	10%
Differential between Zone 1/ Band 4 and Zone 3/Band 6			0%	0%	

Note *: This is the monthly rate for a primary location with a single DS3 CT.

Source: The Verizon Telephone Companies Access Service Tariff F.C.C. No. 11, section 31.7.9 (A) (1) C effective April 28, 2001, Section 30.7.9(A)(1)C, effective November 8, 2002, The Verizon Telephone Companies access Service tariff F.C.C. No. 1, section 7.5.9(B)(1)(d), effective January 5, 2002.

8. Verizon goes on to suggest that another reason for its price changes is an attempt to bring the rates between Verizon North (the former NYNEX states) and Verizon South (the former Bell

Atlantic states) more in line.[6] In point of fact, however, as the data on the table below demonstrates, the gap between the prices charged by Verizon South and Verizon North is greater in areas in which pricing flexibility has been granted than it is elsewhere.

Table 2

Contrary to Its Claims, the Changes that Verizon has made to its Special Access Tariffs Do Nothing to Bring the Prices in Verizon North and Verizon South Territories "More in Line"

Company Name	State	Zone/Band	Standard Pricing "Initial Premises" DS3 Chan Term *	Phase II Pricing Flexibility "Initial Premises" DS3 Chan Term *
Verizon FCC Tariff No. 1	DC,DE, MD, NJ, PA, VA, WV	Zone 1/Band 4	$2,667.50	$3,025.00
		Zone 2/Band 5	$2,800.88	$3,176.25
		Zone 3/Band 6	$2,934.25	$3,327.50
Verizon FCC Tariff No. 11	MA, NY, CT	Zone 1/Band 4	$2,310.00	$2,541.00
		Zone 2/Band 5	$2,425.50	$2,668.05
		Zone 3/Band 6	$2,541.00	$2,795.10
Verizon FCC Tariff No. 11	ME, NH, RI, VT	Zone 1/Band 4	$2,541.00	$2,795.10
		Zone 2/Band 5	$2,541.00	$2,795.10
		Zone 3/Band 6	$2,541.00	$2,795.10
Amount by which Verizon South rate exceeds Verizon North (MA, NY, CT)				
		All Zones	15%	19%
Amount by which Verizon South rate exceeds Verizon North (ME, NH, RI, VT)				
		Zone 1/Band 4	10%	14%
		Zone 2/Band 5	10%	14%
		Zone 3/Band 6	15%	19%

Note *: This is the monthly rate for a primary location with a single DS3 CT.
Source: The Verizon Telephone Companies Access Service Tariff F.C.C. No. 11, section 31.7.9 (A) (1) C effective April 28, 2001, Section 30.7.9(A)(1)C, effective November 8, 2002, The Verizon Telephone Companies Access Service Tariff F.C.C. No. 1, Section 7.5.9(B)(1)(d), effective January 5, 2002.

6. Verizon Comments, at fn. 58.

9. Particularly noteworthy in Verizon's case are the phenomenal increases in the price for Verizon South OS3 channel terminations at "secondary prcmises,"[7] an entire class of customer locations (not limited to specific grographic areas within an MSA) that is less likely to have competitive options available to it. While the variance hetwcen prices for a "primary premises" US-3 channel termination in the Verizon South FCC Tariff No. 1 offered at standard price caps regulated prices and that available in Phase II MSAs is 13% (between $350 and $400 more in Phase II arcas depending upon density zone), the variance for "secondary premises" channel terminations is 71% (ranging between $1,210 and $1,331 more in Phase II areas). Verizon's **gap** in the price for a DS-3 channel termination located in density Zone 1 in the most competitive MSAs in Verizon South territory (encompassing the downtown areas of places like Pittsburgh, PA and Richmond. VA) from the level of $1,700.96 found in the price caps regulated areas to $2,911.37 — a gap of more than 70% — does not begin to be justified by any of the explanations being advanced in Verizon's comments.

7. While the definition of a secondary premises in Verizon's tariff (at Verizon FCC No. 1, Section 7.4.1.A.1) is rather unhelpful, a full reading of the rate regulations reveals rather clearly that the "primary premises" is an IXC POI', and the "secondary premises" is a end user customer prcinises.

Table 3

The extraordinary increases in phase II prices for Secondary Premises DS3 Channel Terminations in Verizon South Territory are not explained by any of the justifications ered bv Verizon

Company Name	State	Zone/Band	standard Pricing "Secondary Premises" DS3*	Phase II Pricing Flexibility "Secondary Premises" DS3*	% by which Phase II prices have been increased over Price Cap Level
erizon	DC, DE, MD, NJ,	Zone 1/Band 4	$1,700.96	$2,911.37	71%
		Zone 2/Band 5		$3,056.94	71%
		Zone 3/Band 6		$3,202.51	71%
ifferential between Zone 1/ Bard 4 and Zone 3/Band			10%	10%	
erızon	MA, NY, CT	Zone 1/Band 4	$1,700.93	$1,871.06	10%
CC Tariff No 11		Zone 2/Band 5	$1,786.01	$1,964.61	10%
		Zone 3/Band 6	$1,871.06	$2,058.17	10%
ifferential between Zone 1/ Band 4 and Zone 3/Band			10%	10%	

de *: This is the monthly rate for a secondary location DS3 CT.

ource: The Verizon Telephone Companies Access Service Tariff F.C.C No. 11, section 31.7.9 (A) (1) C effective pril 28, 2001, Section 30.7.9(A)(1)C, effective November 8, 2002, The Verizon Telephone Companies Access Servic ariff F.C.C. No. 1, Section 7.5.9(B)(1)(d), effective January 5, 2002.

10. Verizon has increased its prices for channel terminations in Phase II pricing areas virtually across-the-board, while keeping the prices for the transport component constant. None of the justifications advanced by Verizon at footnote 58 of its Comments — *viz.:* increasing the differentials among Zones 1, 2 and 3, rationalization of Verizon North and Verizon South rates, and the claim that the channel termination rate increases applied only to its month-to-month rates and not to its Contract Tariff rates — adequately account for this change. As shown in Table 4 below, using month-to-month prices for a single DS-3 as an example once again, the portion of the total price for a two-ended access circuit with 10 miles of associated interoffice transport increased by 36%, while the transport component itself remained unchanged. For DS-1 circuits, Verizon has raised channel terminations in some Phase II areas by up to 24%, while increasing

transport by only 4%.[8] The rice of fill DS-1 circuit with 10 miles of transport has crease almost 11%, with channel termination accounting for over 46% of the circuit price.[9]

Table 4

Verizon has limited most of the increases in its Phase II Tariffs to Channel Terminations, leaving the prices for Transport Price Caps levels

	Standard Pricing	Phase II Pricing	% by Which Phase II Exceeds Standard Pricing
VZ-South - Zone 1/Band 4			
Initial Premises CT	$2,667 50	$3,025.00	13%
Secondary Premises CT	$1,700 96	$2.911.37	71%
Transport Fixed Charge	$825 00	$825.00	0%
Transport Mileage: 10 miles	$1,550 30	$1,550.30	0%
Total Circuil Price	$6.743 76	$8,311.67	23%
CT Portion of Circuit Price	$4.368 46	$5,936.37	36%
VZ-North - Zone 3/Band 6			
Initial Premises CT	$2.541 00	$2,795.10	10%
Secondary Premises CT	$1.871.06	$2,058.17	10%
Transport Fixed Charge	$825.00	$825 00	0%
Transport Mileage: 10 miles	$1,550.30	$1,550.30	0%
Total Circuit Price	$6,787.36	$7,228.57	7%
CT Portion of Circuit Price	$4,412.06	$4,853.27	10%

Source The Verizon Telephone Companies Access Service Tariff F.C.C. No. 11. section 31.7.9 (A) (1) C effective April 28. 2001, Seclion 30.7.9(A)(1)C, effective November 8, 2002, The Verizon Telephone Companies Access Service Tariff F.C C. No. 1, Section 7.5.9(B)(1)(d), effective January 5, 2002.

8. The Verizon Telephone Companies Access Service Tariff, F.C.C. No. 11, sections 31.7.9 (A) (1) (a) effective July 2, 2002 and 30.7.9 (A) (1) (a), effective January 5, 2002; The Verizon Telephone Companies Access Service Tariff, F.C.C. No. 11, sections 31.7.9 (B) (2) and 30.7.9 (B) (2), effective January 5, 2002.

9. DS-1 Channel Termination in Massachusetts Zone 2/Band 5 increased from a standard rate of $228.25 to $283.55. Transport charges increased from $53.00 to $55.00, with a per mile transport charge of $26.30 standard rate, and $27.37 Phase II rate.

11. Verizon also indicates that an analysis of prices offered in areas in which pricing flexibility has bccn granted that is based upon the non-contract based prices is flawed because Vcrizon has filed Contract Tariffs and those Contract Tariff based price levels are the pertinent prices.[10] While I dispute Verizon's contention that any pricing analysis must be based upon Contract Tariff based prices. I nonetheless evaluated whether the existence of the Contract 'Tariffs affected the conclusions yielded by AT&T's initial analysis. The answer is that it does not

12. As ol'the date that this declaration was being prepared, more than eighteen months after it had been granted pricing Ilexibility, Vcrizon had filed only two Contract Tariffs. And although pricing flexibility has been granted in most of the largest of Verizon's markets, the magnitude of special access revenues covered by those two Contract Tariffs represent less than 10% of Verizon's Special Access revenues as reported for calendar year 2001, suggesting that they likely represent an even smaller portion of Special Access revenues today."

13. Moreover. the level of discount being offered through each of Verizon's Contract Tariffs (structured as a discount off of the Phase II general price levels) does not necessarily even compensate for the increases found in the pricing flexibility tariffs. In other words, even with the Contract Tariffdiscounts, the prices for many pricing flexibility services are still above the levels available for the same services in price cap regulated areas. As the table below illustrates, the application of "incentives" available through Verizon's Contract Tariff Option 1. CT Option 1 requires commitment to deliver $301-million in special access billing during the first

10. Verizon Comments, at fn. 58.

11. Based upon the overall volume threshold and minimum traffic requirements found in the two Verizon Contract Tariffs, the aggregate commitmcnt to service is in the range of approximately $400-million per year for both contracts combined across all regions. See, Verizon FCC No. 1. Seclion 21, Verizon FCC No.11, Section 32, and Verizon FCC No. 14, Section 21. Vcrizon's reported special access revenues per ARMIS for 2001 were in excess of $4.7-billion.

year of the contract (escalating to $386-million by the third year), and offers "incentives" for delivery of Product Suite traffic as well. The relevant Product Suite in CT 1 is DS3 Service, and for year one. the customer must deliver a minimum of $132-million in DS3 billing, with the discounts maxing out at $137-million in billing. Using the examples in the tariff, the total incentive discount available for non-DS3 services (based upon annual billing of $340-million) is 2.7%. The incentive discount for the Product Suite. assuming delivery of the $135.5-million in DS3 billing used in the tariff example, works out to 5.4%. Combined, the "Product Suite" and Annual incentives available for DS3 services is equal to 8.1%. Compare this to the 10% and 13% increases in the prices for DS3 month to month channel terminals, or the 71% increase in the secondary channel termination rate in the Verizon South Phase II MSAs, and the discount offered through the Contract Tariff is less than overwhelming.

Table 5

Derivation of Credit Percentages from Contract Tariff Option 1 in Verizon Access Tariffs FCC 1, FCC 11 and FCC 14

	Annual Incentive Component					
					Year 1 credits	
(a)	Total Revenues in Tariff example	$	340,000,000			
(b)	Fixed Incentive Year 1	$	3,800,000	$	3,800,000	
(c)	Tier 1 Discount (applies on $301 to $325 million)		10%	$	2,400,000	
(d)	Tier 2 Discount (applies on $s above $325-million)		20%	$	3,000,000	
(e)	Total Annual Incentive Credit					$ 9,200,000
(f)	Annual Incentive Credit as % of Billing		2.7%			
	Product Suite Incentive					
	Total Revenues in Tariff example	$	135,500,000			
	Level 6 (product suite billing >$137-mil)	100% of annual incentive				
	Level 5 (product suite billing between $136- and 137-mil)	90% of annual incentive				
	Level 4 (product suite billing between $135- and 136-mil)	80% of annual incentive		$	7,360,000	
	Total Product Suite Incentive Credit					$ 7,360,000
	Product Site Incentive Credit as % of Product Site Billing		5.4%			
	Total Incentive % on C63 Product Suite		**8.1%**			
	Total Incentive % on other Special Access Products		2.7%			

Source: Verizon FCC # 1, Section 21, —— 21-12-21-14. Verizon FCC #11, Section 32, pages 32-11 - 32-13 and Verizon FCC # 14, Section 21, pages 21-11 - 21-13

14. Despite their professed interest in engaging in Contract Tariffs as a specific response to the competition that they purport to confront, the other RBOCs also entered into only a handful of Contract Tariffs during 2002. Contract Tariffs in the SRC companies (Southwestern Bell, Pacific Bell. Ameritech and SNET combined) at first glance appear **to** be somewhat more prevalent. Across the entire territory, ten different Contract Tariffs have been filed, nine of which were filed in 2002. However, of those nine 2002 Contract Tariffs, six are essentially term plans for multiplexed DS-0 to DS-1 interoffice transport, and offer no pricing concessions for anything else.[12] Similarly, BellSouth has only tariffed ten custom contracts, half of which were executed during 2002.[13] As of the date of this declaration, Qwest had not executed any Special Access Contract Tariffs.[14]

15. Many of the Contract Tariffs that have been filed are restricted to limited geographic areas. Thus, despite the existence of Contract Tariffs, there are MSAs where Phase II pricing flexibility has been granted but where no services are currently being provided or offered pursuant to a Contract Tariff. **As** an example, a review of the ten Contract Tariffs filed by BellSouth reveals that although full Phase II pricing flexibility has been granted in the Columbia, SC, Evansville, KY, Owensboro, KY and Lafayette, LA **MSAs,** not one of BellSouth's Contract Tariffs offers contract based pricing in those MSAs. One of the other contracts applies in only eight of BellSouth's thirty Phase II pricing flexibility **MSAs,** while another is limited to eleven, and a third to eighteen out of the full thirty.

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12. SWBT Tariff FCC No. 73 - Section 41, Ameritech Tariff FCC No. 2, Section 22 and Pacific Bell Tariff FCC No. 1, Section 33.

13. BellSouth Tariff FCC No. 1. Section *25.*

14. Qwest Tariff FCC No. 1, Section 23.

Table 6

BellSouth MSAs in which Full Service (Phase II) Relief has been granted that are **excluded** from BellSouth Contract Tariffs.

1	Evansville. KY, Owensboro, KY, Lafayette. LA. Columbia, SC
2	Evansville. KY. Owensboro. KY, Lafayelte, LA, Columbia, SC
3	Montgomery. AL, Jacksonville, FL, Pensacola, FL, West Palm Beach, FL, Savannah, GA. Evansville. KY. Louisville, KY. Owensboro. KY, Baton Rouge, LA, Lafavette. LA, Lake Charles. LA. Monroe. LA, Shreveport, LA. Biloxi. MS Jackson, MS, Chatanooga, TN, Knoxvilee, TN, Nashville TN, Columbia SC
4	Evansville, KY, Owensboro, KY, Lafayette, LA, and Columbia,SC
5	Evansville, KY. Owensboro, KY. Lafayette, LA, and Columbia,SC
6	Evansville, KV. [illegible]wensboro KY, Lafayette, LA, Lake Charles, LA, and Columbia,S
[illegible]	Evansville, KY, Owensboro KY, Lafayette, LA, and Columbia,SC
8	Montgomery. Al, Daytona Beach, FL, Gainesville. FL, Jacksonville, FL, Melbourne, FL. Miami, FL. Orlando, FL. West Palm Beach, FL. Atlanta, GA, Savannah, GA, Evansville. KY. Louisville. KY. Owensboro. KY. Lafayette, LA, Charlotte. NC. Greensboro, NC. Raleigh-Durham, NC, Wilrnington. NC, Chattanooga, TN, Knoxville, TN, Memphis, TN. Columbia, SC
9	Pensacola, FL. Savannah. GA. Evansville, KY, Owensboro. KY, Baton Rouge, LA, Lafayelte. LA, Lake Charles, LA. Monroe, LA, Shreveport, LA. Jackson. MS, Columbia, SC
10	Evansville, KY. Owensboro. KY. Lafayette. LA, Columbia, SC

2. FACILITIES-BASED COMPETITION IS STILL EXTREMELY LIMITED, EVEN IN PHASE II PRICING FLEXIBILITY MSAs.

Competitively provided special access facilities are only available at an extremely small number of commercial buildings, forcing IXCs to acquire the vast majority of these services from the ILEC.

16. Special access services consist of three principal elements — the loop facility connecting the customer's premises with the serving wire center ("Channel Termination"), Interoffice Transport links interconnecting two or more wire centers, and entrance facilities. While the Commission's Phase II Pricing Flexibility requirements are driven primarily by the presence of CLEC/CAP collocation arrangements in ILEC central offices,[15] in practice such collocation may possibly affect the ability of a CLEC/CAP to compete with the ILEC for Interoffice Transport, but *not* its ability to provide the special access link to the customer's premises. Indeed, RBOCs fail to provide any evidence of competitive facilities being used to displace either *interoffice transport* in the RBOC network or channel terminations to end user premises. Accordingly, even if the presence of multiple collocation arrangements were by itself sufficient to establish the presence of effective competition for *interoffice transport* — which in many cases it is not — the presence of such collocation does not facilitate or support competition with respect to "last mile" channel terminations to individual customer premises, the market for which with few exceptions remains the near-exclusive domain of the incumbent LECs.

17. In order to compete without the use of any ILEC special access service, a CLEC/CAP must either deploy its own facilities between the customer's premises and the CLEC's central office, or acquire them from another CLEC/CAP, if available. Absent that, the fact that the CLEC/CAP may have a collocation presence in the ILEC wire center serving the customer will *not enable it* to bypass ILEC special access channel termination service. If the CLEC wants to

15. *Pricing Flexibility Order*, 14 FCC Rcd 14221, 14261-14262,

offer competitive transport facilities to customers in buildings that are not served by its own or by another CLEC's subscriber facilities, the *only* means by which it can interconnect its competitive transport facilities with its customer is via ILEC-provided special access.

18. ILECs own subscriber access line facilities connecting some 3- to 4-million commercial buildings nationwide.[16] AT&T currently provides service at approximately 186,000 coinmercial buildings.[17] Of these, AT&T *owns* facilities to only about 6,700 buildings, and obtains facilities *from other CLECs* at approximately 3,300 additional locations.[18] Thus. competitive alternatives to ILEC spccial access service are available at only about 10,000 locations, representing roughly 5.7% ofthe approximately 186,000 commercial buildings at which AT&T currently provides service, and at less than 0.4% of the 3- to 4-million commercial buildings nationwide.

19. The availability of coinprtitivr alternatives to ILEC special access in **MSAs** subject to Phase II pricing tlcxibility is **not** appreciably greater. AT&T currently serves 38,477 buildings

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16. This does not necessarily mean that the potential market for special access-like facilities consists of all commercial buildings. On the othcr hand, it clearly consists of more buildings than merely those that are currently receiving service.

17. LNS Building Data Warehouse, http://scot.als.att.com/scot/, accessed January 22, 2003 and LNS Building Inventory, AT&T Proprietary Database, accessed January 10, 2003.

18. *Id.*

in the Full Coverage Phase II MSAs,[19] and owns or has access to other CLEC-owned facilities in only about 2,375 of these[20] (see Table below), about 6% overall

Table 7

Competitive Alternatives to ILEC Special Access are Minnimally Available Even in MSAs with Phase II Pricing Flexibility

Type of Pricing Flexibility	TOTAL AT&T - served buildings	AT&T	Other CLECs	ILECs
Full Coverage Under Phase II		1,661	714	36,102
	38,477	4.32%	1.86%	93.83%
Limited Coverage Under Phase II		4176	1,893	88,133
	94,202	4.43%	2.01%	93.56%
No pricing flexibility		890	682	51,884
	53,456	1.66%	1.28%	97.06%
TOTALS		**6,727**	**3,289**	**176,119**
	186,135	**3.61%**	**1.77%**	**94.62%**

Sources: See footnote 19.

19. Southwestern Bell Telephone Company, Tariff FCC No. 73, Section 39.2(A) and (B), 1st Revised Page 39-3, Effective: June 18, 2002; Qwest Corporation, Tariff FCC No. 1, Section 23, Original Page 23-0 - Original Page 23-28, Effective: June 15, 2002; The Verizon Telephone Companies, Tariff FCC No. 1, Section 14.7, Original Page 14-44 - Original Page 14-61, Effective: July 3, 2001; The Veriron Telephone Companies, Tariff FCC No. 11, Section 15.3, Original Page 15-19 - Original Page 15-34, Effective: July 3, 2001; Vcrizon Telephone Companies, Tariff FCC No. 14, Section 19.1, Original Page 19-1 - 3rd Revised Page 19-37, Effective: May 2, 2001 through June 1, 2002; The Southern New England Telephone Company, Tariff FCC NO. 39, Section 24.2(A) and (B). Original Page 24-2, Effective: June 18, 2002; Ameritech Operating Companies, Tariff FCC No. 2, Section 21.2 (A) and (B), 1st Revised Page 689. Effective June 18, 2002; Pacific Bell Telephone Company, Tariff FCC No. 1, Section 31.2(A) and (R), 3rd Revised Page 31-3, Effective: July 2, 2002.

20. *Id.*

20. Even in MSAs wiih the largest CLEC presence, CLECs must rely upon ILEC-provided spccial access scrvices for the majority of their customer connectionr. Consider, for example, the following statistics for the New York, Boston, Chicago and Los Angeles areas:

Table 8

Competitive Allernatives to ILEC Special Access are Minimally Available Even In Areas with the Largest CLEC Presence

MSA	AT&T Share	Other CLEC Share	ILEC Special Share
New York	12.6%	1.5%	85.9%
Boston	11.8%	1.7%	86.5%
Chicago	4.6%	1.4%	94.0%
Los Angeles	3.5%	1.1%	95.4%

Even in the most compctitivc arca in the US, New York, no AT&T or othcr CLEC facilities are available at ***85.9%*** ofthosc locations. A similar pattern is evident in each of the other three large markets. Moreover, it would be incorrcct to interpret these aggregate MSA-wide figures as suggesting that ihe disiribution of AT&T- and CLEC-owned facilities is anything close to homogeneous within each of these MSAs. The principal location of AT&T- or CLEC-owned facilities is generally limited to the central business district and to a few other isolated locations. It is also noteworthy that there are large areas in which there are ***no*** AT&T-connected customer locations at all; in these locations, the ILEC remains the sole support of local telecommunica tions services. The cxtrcmely limited availability and non-homogeneous distribution of non-ILEC facilities, even in MSAs with the greatest competitive presence, underscores the conclusion that the MSA is simply too large an area within which to assess the ability and opportunity for CLECs to compete for special access services. And except in *those* specific locations where CLEC-provided special access facilities are in place, the ILEC maintains its unchallenged monopoly and market puwcr.

21. Both BellSouth and Veriron have attempted to misdirect the Commission away from this indisputable reality by introducing theoretical "studies" and other evidence that purports to show a substantially greater amount of facilities-based CLEC activity than is actually present. These RBOC "studies" and their portrayals of an intensely competitive facilities-based market are so fatally flawed that they must be dismissed as cntirely meritless.

BellSouth's Eastern Management Croup "study" rests entirely upon unsupported and patently false assumptions and assertions of "fact"

22. BellSouth has attempted to dismiss these empirical realities by offering an entirely theoretical "study" penned by the Eastern Management Group ("EMG") that purports to "derive the likelihood that Special-Access type facilities will he available in BellSouth's territory."[21] The EMG paper appears to be premised upon the notion that "the likelihood of the presence of such [collocated CLEC] facilities in a wire center indicates the availability of alternatives to Bell-South Special Access."[22] I disagree. What "indicates the availability of alternatives to BellSouth Special Access" is the *actual presence* of alternative facilities in a wire center, not some theoretical calculation of "likelihood" that is itself premised upon entirely unsupported assumptions that are simply wrong as a matter of fact.

23. Not surprisingly, of course, EMG's calculation of theoretical "likelihood" is driven entirely by an *assumption* of actual presence of CLEC-owned facilities in each wire center. EMG contends that. on average, *each collocated CLEC individually owns special access type facilities connected to 30.9% of the buildings served by that wire center*:

> The probability of an IXC being able to purchase special access from a collocated CLEC is simply (I — probability that no collocated CLEC is willing to

21. Comments of BellSouth, Exhibit 2 ("EMG Report"), at 7.

22. *Id*, at 7.

> participate in the sale). *The likelihood that a CLEC* is ***willing to participate in a special access sale is estimated by the fraction of its*** *connected buildings that* ***tire on-net as opposed to being on-switch or total .service resale.*** (We assume normal business behavior, that is, that the CLECs will want lo maximize the use of their network facilities.) ***We estimate this likelihood to be 30.9% across BellSouth's territory.*** 'Therefore if there are 2 collocated CLECs, the probability of the special access sale is $1-(1-0.309)^2 = 0.52$.[23]

EMG's 30.9% figure purports to represent the proportion of only those buildings in which CLECs have customers where CLEC-owned facilities (designated as "on net") are present ("the fraction of its connected buildings that are on-net as opposed lo being on-switch ***or*** total service resale"). Although the 30.9% figure is characterized as an "average," EMG's specific use of it assumes that *exactly* 30.9% applies to ***each*** collocated CLEC in ***each*** BellSouth wire center in which such collocation is present. Mvreover, EMG's exponential calculation ***requires*** that, for each CLEC, the "on net" (vs. ILEC Special Access-served) buildings are randomly distributed among all buildings served by the wire center. *Not only does EMG offer no support for any of these assumptions, they* ***tire*** *undoubtedly not* ***even remotely close to reality.***

24. Even if all of EMG's purported "facts" and "assumptions" were accurate — which they arc not — its use of the proportion of CLEC on-net buildings to total CLEC-connected buildings tcachcs nothing about the likelihood that a ***neiv*** customer **not** located in a building that has any CLEC presence can be served by means of a compctitivc alternative to ILEC Special Access. 'The appropriate driver for this "likelihood" analysis is necessarily the proportion of CLEC "on net" buildings to *all buildings* ***served*** *by the ILEC wire* ***center,*** whether or not any existing customer therein takes service that is provided by a CLEC. Using AT&T's statistics for purposes of illustration (i.e., 186.000 out of 3- to 4-million commercial buildings) and accepting **EMG's** 30.9% "on net" proportion, the proportion of CLEC on-net buildings to **total** commercial

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23. *Id.*, at 9, emphasis supplied. footnotes omitted

buildings would translate to 30.9% of the 5% to **6%** of all commercial buildings in which any CLEC connection exists, i.e., roughly 1.5% to **1.8%** overall.

2.5. It is also extremely unlikely that the incidence of CLEC "on net" buildings is randomly distributed among all CLECs with a collocaiion presence in a given wire center, as EMG has assumed. In fact, it is far more likely that many of the same buildings are being served by more than one **CLEC.** In that case, EMG's exponential calculation would materially overstate the "likelihood" that an IXC could obtain special access type services from ai least one CLEC. Indeed, at the opposite extreme, if *all* collocated CLECs served exactly the same buildings, then the presence of more than onr CLEC in a wire center would not increase the likelihood above the single-CLEC level, i.e., 30.9% under EMG's assumption, or in the 0.4% range based upon the proportion of CLEC on-net buildings vs. all commercial buildings served by the wire center.

26. The EMG analysis thus rests upon numerous unsupported and grossly unrealistic assumptions, and so leaches nothing whatsoever as lo the "likelihood" that CLEC-owned facilities will be available to serve a given customer premises. Nevertheless, 1 have attempted to replicate EMG's calculations using more realistic assumptions, and, when this is done, the results are dramatically different.

27. EMG's 'Table 3 presents what EMG seeks to portray as the "probability of CLEC availability for wholesale special access to IXC." I have recast **EMG's** Table 3 using (a) the percentage of the 186,000 AT&T customer locations at which AT&T-owned on-net special access facilities are available (3.23%) as an estimate **of** the average percentage of a given CLEC's customer locations that are served by that CLEC's own facilities, and (b) the percentage of total conirricrcial buildings at which AT&T-owned facilities are available (0.2%) as an estimate of the average percentage of all commercial buildings scrved by a given wire center that are served by that CLEC's own facilities: